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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/991,818

11/19/2001

Michael J. Jungbauer

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10/06/2003

NIKOLAI & MERSEREAU, P.A.

900 SECOND AVENUE SOUTH

SUITE 820

MINNEAPOLIS, MN 55402

EXAMINER

BARRY, CHESTER T

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,818

Applicant(s)

JUNGBAUER, MICHAEL J.

Examiner

Chester T. Barry

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/21/03, 6/9/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claims 1 – 2, 5 – 6 are rejected under 35 USC § 112(1) insofar as the original disclosure does not provide an adequate written description of the claimed invention.

Claim 1 states that the dissolved oxygen level is between “about 5” and “about 6” mg/L.

The application supports a dissolved oxygen level of “between 5 and 6 mg/l,” but not a dissolved oxygen level of between “about 5” and “about 6” mg/l.” With respect to claim 5, applicant’s specification does not provide an adequate written description of the “aerator” that is presumably placed within each of the six six-inch diameter holes 60.

What are these aerators? What do they look like? Per claim 5, the specification as filed supports a “six inch” diameter hole, not “approximately a six inch” diameter hole,” as recited in claim 5. The application as original filed supports “six” aerator holes, not “about six” as claimed in claim 6.

The figure is objected to for want of the figure to depict the “aerator” that is placed within each of the six six-inch diameter holes 60.

Claims 1, 2, 5, and 6 are objected to for minor informalities. It would be proper to say that the dissolved oxygen level is “between 5 and 6 mg/l,” but not that the dissolved oxygen level is “between . . . 5 **to** . . . 6 mg/l” (emphasis added), as recited in claim 1. It is noted that applicant’s specification does **not** support dissolved oxygen levels of 5 mg/L or 6 mg/L: The application states that the dissolved oxygen level is **between** these two levels. In claim 6, “6 aerator” should appear as “six aerators.”

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Claims 5 – 6 are rejected under 35 U.S.C. Sec. 112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. Claim 5 states that the “aerator” is formed by augering a six inch diameter hole, then goes on to say that an “aerator” is placed within the “aerator.” It’s unclear whether the six inch diameter hole itself is the aerator (as suggested by the specification’s reference to “aerator 60” and the figure), or whether the device placed within the whole is the “aerator,” or both the hole and the device is the “aerator.” Per claim 6, it is unclear what the range of values “about 6” aerator holes may take. Five? Three? Four-and-a-half? Amendment from “about 6” to “six” would overcome this basis. Also per claim 6, it is unclear what a “typical” household is. Households vary in size from small families (as few as one person), to relatively large households with a couple and half-a-dozen or more children. The load on a septic tank and drain field system would vary considerably between these two examples.

Claim 1 is rejected under 35 USC § 103(a) as obvious over USP 6485647 to Potts in view of USP 6245237 to Blough. Potts describes a waste stream of human waste leading to an aerated septic tank (col 16, 63-64) and further to and aerated leach field (drain field). Blough suggests aerating a septic tank to a dissolved oxygen level of 6 – 10 ppm, or 6 mg/L to 10 mg/L. It would have been obvious to have aerated Potts’ aerated septic tank to about 6 mg/L, as suggested by Blough, to improve treatment therewithin.

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Claim 2 is rejected under 35 USC § 103(a) as obvious over USP 6485647 to Potts (read in the light of Tighe) in view of USP 6245237 to Blough. Potts describes a waste stream of human waste leading to an aerated septic tank (col 16, 63-64) and further to and aerated leach field (drain field). As is well known, human waste includes bacteria (e.g., E. coli) and nutrients. Perhaps less well-known is the fact that human waste also includes enzymes, as shown, for example, by USP 5580565 to Tighe. Blough suggests aerating a septic tank to a dissolved oxygen level of 6 – 10 ppm, or 6 mg/L to 10 mg/L (col 2 line 47). It would have been obvious to have aerated Potts' aerated septic tank to about 6 mg/L, as suggested by Blough, to improve treatment therewithin.

Claims 5 and 6 are allowable over art. The art fails to suggest that holes six inches in diameter be augered down to the point of aggregate rock and that separate "aerator" devices be placed therewithin.

Claim 5 would be allowed if presented in independent form and amended to overcome the non-art based objections and rejections noted in this Office action.

Similarly, Claim 6 would also be allowed if presented in independent form and amended to overcome the non-art based objections and rejections noted in this Office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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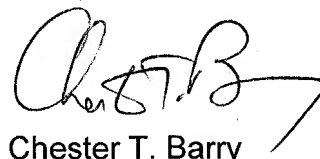
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chester T. Barry whose telephone number is 703-306-5921. The examiner can normally be reached on M - F 9 - 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 703.308.1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Chester T. Barry
703-306-5921 direct
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